

From: Laura Smith
To: Microsoft ATR
Date: 1/29/02 12:32am
Subject: Microsoft Settlement

January 28, 2002 (10:30pm MST)

RE: Microsoft Settlement

To whom it may concern:

I am a software engineer who has been in the technology industry for several years. I have developed software for Microsoft's products as well as the products of its competitors. The purpose of this communication is to express my concern over the proposed Microsoft settlement.

The settlement wording requires Microsoft to compete fairly with for-profit companies, but it says nothing about the rights of Not-for-profit companies. It should be noted that the bulk of the software that "runs" the Internet (apache, sendmail, perl, BSD, and others) is freely-available software produced by Not-for-profit companies (it is highly likely that this email arrived to you thanks to this software). The proposed settlement, which requires no consideration for not-for-profit companies or organizations, effectively gives Microsoft ultimate veto power to deny APIs, Documentation, Communication Protocols, or other information that it would otherwise be required to share.

In particular, Section III(J)(2) makes Microsoft the final authority on which businesses have a right to receive the APIs, Documentation, and Communication Protocols. The wording states that Microsoft only has to give the preceding information to a company that "(b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business". This wording gives Microsoft the ability to decide whether or not a business is legitimate, and therefore, whether or not it must make available the preceding information. Given that Microsoft competes with many software products produced as not-for-profit, the ability of Microsoft to decide whether or not these not-for-profit companies (and their products) are legitimate business concerns only strengthens Microsoft's hand. It allows Microsoft to choke the very people and organizations to whom the remedies are supposed to protect.

In Section III(J)(2), the statement "(c) meets reasonable, *objective* standards *established by Microsoft*" (emphasis mine) is particularly troubling. Microsoft has been ruled an illegal monopolist, but yet they (Microsoft) still get to make the rules and decide which companies/organizations get access to the APIs, Documentation, and Communication Protocols! Giving Microsoft the ability to determine

"objective" standards does nothing to control or regulate the above information. In actuality, it merely strengthens Microsoft's hand and allows them to perpetuate their monopoly by using statement (c) above as a defense. Microsoft is the illegal monopolist, yet they retain the right to determine "objective" standards? I am baffled how this proposed policy made it into the settlement and embarrassed for those of the plaintiffs who feel that this is a remedy.

Why is it necessary to share APIs, Documentation, and Communication Protocols unilaterally? Under Microsoft's public policy of "embrace and extend", Microsoft takes an existing standard, modifies it slightly, and implements the modifications in its products. Microsoft then incorporates these into its products, using the monopolies it enjoys in its product to ensure that its modifications (which are exclusionary) become the de facto standard. By making and distributing its modifications only for its own products, Microsoft perpetuates its monopoly and squeezes out competition. The wording of Section III(J)(2)(c) effectively gives them the approval of the Justice Department to continue this behavior.

Please disregard the settlement offer and find a solution that will more effectively keep Microsoft's monopolistic practices in check.

Sincerely,
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